



Reprinted
February 24, 2015

SENATE BILL No. 539

DIGEST OF SB 539 (Updated February 23, 2015 8:37 pm - DI 55)

Citations Affected: IC 7.1-1; IC 7.1-7 .

Synopsis: Regulation of e-liquids. Defines "e-liquid" as a substance that is intended to be vaporized and inhaled using a vapor pen. Requires a manufacturer of e-liquid to obtain a permit from the alcohol and tobacco commission before bottling e-liquid or selling e-liquid to retailers or distributors. Provides that the initial application for a manufacturing permit must include: (1) plans for the applicant's manufacturing facility; (2) a service agreement between the applicant and a security firm requiring the security firm to certify that the manufacturer meets certain security requirements; and (3) an application fee of \$1,000. Provides that a manufacturer's permit is valid for five years and establishes requirements for permit renewal, including a \$500 permit renewal application fee. Establishes manufacturing requirements, including the use of child proof caps on e-liquid containers; the performance of all mixing, bottling, and packaging activities in a "clean room"; the storage of all e-liquid ingredients in a secure area; and the maintenance of three sample bottles from each production batch for at least three years. Limits the ingredients that can be used in making e-liquid. Requires all e-liquid
(Continued next page)

Effective: July 1, 2015.

**Yoder, Miller Patricia, Holdman,
Arnold J, Broden, Randolph**

January 14, 2015, read first time and referred to Committee on Commerce & Technology.
February 2, 2015, amended, reported favorably — Do Pass.
February 9, 2015, reassigned to Committee on Tax & Fiscal Policy.
February 19, 2015, amended, reported favorably — Do Pass.
February 23, 2015, read second time, amended, ordered engrossed.

SB 539—LS 7388/DI 77



Digest Continued

retailers, distributors, and manufacturers who mix, bottle, or sell e-liquid in Indiana before July 1, 2015, to: (1) sell or remove from retail all e-liquid that was manufactured before July 1, 2015; or (2) acquire a tobacco sales certificate, an e-liquid manufacturing permit, or a tobacco products distributor's license; before July 1, 2016. Provides for the suspension or revocation of a manufacturer's permit and the assessment of a civil penalty against a manufacturer for a violation of the law. Provides that a retailer who knowingly: (1) sells e-liquid to a minor; (2) sells e-liquid purchased from a manufacturer that does not have a permit; or (3) sells e-liquid that has been altered or tampered with; commits a Class C infraction. Makes other unauthorized actions involving e-liquid a Class A infraction. Authorizes a permit holder to bring a civil action against an e-liquid producer that distributes e-liquid not approved for sale in Indiana.



Reprinted
February 24, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 539

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-1-3-5.5, AS ADDED BY P.L.94-2008,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 5.5. (a) "Applicant", for purposes of
4 IC 7.1-3-18.5, means a person who applies for a tobacco sales
5 certificate.
6 (b) "Applicant", for purposes of IC 7.1-7, has the meaning set
7 forth in IC 7.1-7-2-2.
8 SECTION 2. IC 7.1-1-3-13 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. ~~Container. The term~~
10 (a) "Container", **except as provided in subsection (b)**, means a
11 receptacle in which an alcoholic beverage is immediately contained
12 and with which the alcoholic beverage contained in it is in immediate
13 contact.
14 (b) "Container", for purposes of IC 7.1-7, has the meaning set
15 forth in IC 7.1-7-2-5.
16 SECTION 3. IC 7.1-1-3-14.5 IS AMENDED TO READ AS

SB 539—LS 7388/DI 77



1 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14.5. ~~Department. The~~
 2 ~~term (a) "Department", except as provided in subsection (b),~~ means
 3 the Indiana Department of State Revenue.

4 **(b) "Department", for purposes of IC 7.1-7, has the meaning set**
 5 **forth in IC 7.1-7-2-7.**

6 SECTION 4. IC 7.1-1-3-15.5, AS ADDED BY P.L.20-2013,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 15.5. **(a) "Electronic cigarette", except as**
 9 **provided in subsection (b),** has the meaning set forth in
 10 IC 35-46-1-1.5.

11 **(b) "Electronic cigarette", for purposes of IC 7.1-7, has the**
 12 **meaning set forth in IC 7.1-7-2-9.**

13 SECTION 5. IC 7.1-1-3-25 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 25. ~~Minor. The term (a)~~
 15 **"Minor", except as provided in subsection (b),** means a person less
 16 than twenty-one (21) years of age.

17 **(b) "Minor", for purposes of IC 7.1-7, has the meaning set forth**
 18 **in IC 7.1-7-2-17.**

19 SECTION 6. IC 7.1-1-3-29 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 29. ~~Permit. The term~~
 21 **(a) "Permit", except as provided in subsection (b),** means a written
 22 authorization issued by the commission entitling its holder to
 23 manufacture, rectify, distribute, transport, sell, or otherwise deal in
 24 alcoholic beverages, all as provided in this title.

25 **(b) "Permit", for purposes of IC 7.1-7, has the meaning set forth**
 26 **in IC 7.1-7-2-18.**

27 SECTION 7. IC 7.1-1-3-30 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 30. ~~Permittee. The term~~
 29 **(a) "Permittee", except as provided in subsection (b),** means

30 ~~(a) a person who is the holder of a valid permit under this title, and;~~
 31 ~~(b) Also includes including~~ an agent, servant, or employee of, or
 32 other person acting on behalf of, a permittee, whenever a permittee is
 33 prohibited from doing a certain act under this title.

34 **(b) "Permittee", for purposes of IC 7.1-7, has the meaning set**
 35 **forth in IC 7.1-7-2-19.**

36 SECTION 8. IC 7.1-1-3-47.5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 47.5. **(a) "Tobacco**
 38 **product", except as provided in subsection (b),** has the meaning set
 39 forth in IC 7.1-6-1-3.

40 **(b) "Tobacco product", for purposes of IC 7.1-3-18.5, means a**
 41 **product that:**

42 **(1) contains tobacco, including e-liquid (as defined by**



1 **IC 7.1-7-2-10) that contains tobacco; and**

2 **(2) is intended for human consumption.**

3 SECTION 9. IC 7.1-7 IS ADDED TO THE INDIANA CODE AS A
4 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
5 **2015]:**

6 **ARTICLE 7. VAPOR PENS AND E-LIQUID**

7 **Chapter 1. Applicability and Purpose**

8 **Sec. 1. This article applies to the following:**

9 **(1) The commercial manufacturing, bottling, selling,**
10 **bartering, or importing of e-liquid in Indiana.**

11 **(2) The sale, possession, and use of e-liquid products in**
12 **Indiana.**

13 **Sec. 2. The purpose of this article is, in the absence of federal**
14 **regulations, to protect public health and safety by:**

15 **(1) ensuring the safety and security of e-liquid manufactured**
16 **for sale in Indiana;**

17 **(2) ensuring that e-liquid manufactured or sold in Indiana**
18 **conforms to appropriate standards of identity, strength,**
19 **quality, and purity; and**

20 **(3) ensuring that e-liquid is not contaminated or adulterated**
21 **by the inclusion of ingredients or other substances that might**
22 **pose unreasonable threats to public health and safety.**

23 **Sec. 3. This article does not limit the powers or duties of the**
24 **commission under IC 7.1-2.**

25 **Sec. 4. This article may not be construed to restrict or limit any**
26 **law under IC 35-48.**

27 **Chapter 2. Definitions**

28 **Sec. 1. The definitions contained in this chapter apply**
29 **throughout this article unless the context clearly requires**
30 **otherwise.**

31 **Sec. 2. "Applicant" means a person who applies for a permit**
32 **under this article.**

33 **Sec. 3. "Audit" means a procedure performed by the**
34 **commission, including inspection of manufacturing facilities and**
35 **preparation areas, review of required records, compliance checks,**
36 **and auditing of samples of e-liquid.**

37 **Sec. 4. "Clean room" refers to the part of an e-liquid**
38 **manufacturing facility where:**

39 **(1) the mixing, bottling, and packaging activities are**
40 **conducted in secure and sanitary conditions in a space that is**
41 **kept in repair sufficient to prevent e-liquid from becoming**
42 **contaminated;**



(2) equipment used in the manufacturing process is easily cleanable, as defined in 410 IAC 7-24-27(a), in such a way that it protects against contamination of e-liquid, e-liquid containers, or e-liquid packaging materials; and

(3) the cleaning and sanitizing of equipment is consistent with the Indiana standards for public health and cleanliness that apply to commercial kitchens in the state.

Sec. 5. "Container" means any receptacle that contains e-liquid.

Sec. 6. "Cooperative" means any group of people who join together to satisfy the requirements set forth in IC 7.1-7-4-6.

Sec. 7. "Department" means the Indiana state department of health.

Sec. 8. "Distributor" means a person who is licensed under IC 6-7-2-8 that:

(1) distributes, sells, barter, or exchanges e-liquid in Indiana to retail dealers for the purpose of resale; or

(2) purchases e-liquid directly from a manufacturer for the purpose of resale.

Sec. 9. "Electronic cigarette" means a powered vaporizer that:

(1) is the size and shape of a traditional cigarette;

(2) uses a sealed nonrefillable cartridge containing not more than four (4) milliliters of a liquid; and

(3) is intended to be vaporized and inhaled.

The term does not include a vapor pen.

Sec. 10. "E-liquid" means a substance that:

(1) is intended to be vaporized and inhaled using a vapor pen; and

(2) specifically excludes substances contained in non-refillable sealed cartridges of four (4) milliliters or less used in e-cigarettes.

Sec. 11. "Employee" means a person who works directly in the service of another person under an express or implied contract of hire, and the employer has the direct right to control the details of work performance. The term does not include a person who works for any independent subcontractor, temporary service provider, or an entity or person not under the direct full control of the employer.

Sec. 12. "Flavorings" means a food grade additive or synthetic flavoring substance that is used to add flavor, that is approved by the federal Food and Drug Administration as a permissible flavoring, and that is not prohibited by law.

Sec. 13. "Key system" means a licensed or patented key design



1 used to prevent unauthorized duplication of keys for use in high
 2 security installations, and that is prospectively exclusive to the
 3 security firm for a period of at least ten (10) years.

4 Sec. 14. "Locksmith" means a person who, or a firm that
 5 employs at least one (1) employee who, for the previous one (1)
 6 year period has been certified as a certified professional locksmith
 7 by the Associated Locksmiths of America.

8 Sec. 15. "Manufacturer" means a person or cooperative, located
 9 inside or outside Indiana, that is engaged in manufacturing
 10 e-liquid.

11 Sec. 16. "Manufacturing" means the process by which an
 12 e-liquid is mixed, bottled, packaged, and stored.

13 Sec. 17. "Minor" means an individual who is less than eighteen
 14 (18) years of age.

15 Sec. 18. "Permit" means a written authorization issued by the
 16 commission entitling the holder to manufacture, sell, or otherwise
 17 deal in e-liquid, as provided in this article.

18 Sec. 19. "Permittee" means a person who holds a valid permit
 19 under this article, including an agent of, employee of, or other
 20 person acting on behalf of, a permittee.

21 Sec. 20. "Retailer" means a person, other than a manufacturer,
 22 who in the ordinary course of the person's regular trade or
 23 business:

24 (1) acquires any form of e-liquid for the purpose of resale;
 25 and

26 (2) transfers the e-liquid to another person for money or other
 27 consideration.

28 Sec. 21. "Security firm" means an entity that:

29 (1) is independent from an applicant and manufacturer;

30 (2) has experience in the security business; and

31 (3) as of July 1, 2015:

32 (A) meets the qualifications under IC 7.1-7-4-1(d)(3);

33 (B) is a locksmith; and

34 (C) provides services necessary to ensure the safety and
 35 security of e-liquid manufactured for sale in Indiana.

36 Sec. 22. "Vapor pen" means a powered vaporizer, other than an
 37 electronic cigarette, that converts e-liquid to a vapor intended for
 38 inhalation.

39 Chapter 3. Duties and Responsibilities of the Alcohol and 40 Tobacco Commission

41 Sec. 1. The commission is responsible for the enforcement and
 42 administration of this article.



1 **Sec. 2. (a) The commission has the following duties and**
 2 **responsibilities:**

3 **(1) To require the submission of information reports, plans,**
 4 **and specifications that are necessary to implement this article.**

5 **(2) To issue permits.**

6 **(3) To charge fees to cover the costs of administering this**
 7 **article. The fees charged under this subdivision may not**
 8 **exceed the actual costs incurred by the commission.**

9 **(4) To audit facilities that manufacture or sell e-liquid.**

10 **(5) To audit random samples maintained by the manufacturer**
 11 **to ensure the safety and quality of the e-liquid and that the**
 12 **e-liquid meets the requirements in this article.**

13 **(6) To ensure, in coordination with the department, that the**
 14 **e-liquid manufactured or sold in Indiana conforms to**
 15 **appropriate standards of identity, strength, quality, and**
 16 **purity.**

17 **(7) To approve not less than three (3) different independent**
 18 **testing laboratories to which a manufacturer may choose to**
 19 **send any e-liquid sample for testing, at the manufacturer's**
 20 **expense, as part of any audit, as directed by the commission.**

21 **(b) All records subject to audit by the commission under**
 22 **subsection (a) are declared confidential for the purposes of**
 23 **IC 5-14-3-4(a)(1) and are not subject to inspection or copying by**
 24 **the public.**

25 **Sec. 3. The commission shall adopt rules, under IC 4-22-2, that**
 26 **are necessary to administer this article.**

27 **Chapter 4. Permit Requirements**

28 **Sec. 1. (a) A manufacturer of e-liquid shall obtain a permit from**
 29 **the commission before mixing, bottling, packaging, or selling**
 30 **e-liquid to retailers or distributors in Indiana.**

31 **(b) The commission shall accept initial applications and issue**
 32 **manufacturing permits until June 30, 2016.**

33 **(c) A manufacturing permit issued by the commission is valid**
 34 **for five (5) years.**

35 **(d) An initial application for a manufacturing permit must**
 36 **include the following:**

37 **(1) Plans for the construction and operation of the**
 38 **manufacturing facility that demonstrate that the facility**
 39 **design is:**

40 **(A) designed to include a clean room space where all**
 41 **mixing, bottling, and packaging activities will occur; and**

42 **(B) capable of meeting all of the security requirements**



- 1 contained in this article.
- 2 (2) A service agreement that:
- 3 (A) the applicant has entered into with a security firm;
- 4 (B) is valid for a period of five (5) years after the date of
- 5 the permit application;
- 6 (C) provides for the security firm to provide service and
- 7 support to meet the security requirements established by
- 8 this article;
- 9 (D) requires the security firm to certify that the
- 10 manufacturer meets all requirements set forth in
- 11 IC 7.1-7-4-6(10) through IC 7.1-7-4-6(15);
- 12 (E) prohibits the security firm from withholding its
- 13 certification as described in clause (D) because the security
- 14 equipment of the applicant is not sold by or proprietary to
- 15 the security firm; and
- 16 (F) is renewable for the entire length of time that the
- 17 applicant holds a permit issued by the commission.
- 18 (3) Verified documents satisfactory to the commission from
- 19 the security firm demonstrating that the security firm meets
- 20 the following requirements:
- 21 (A) The security firm has continuously employed at least
- 22 one (1) employee for not less than the previous one (1) year
- 23 period who is accredited or certified by both:
- 24 (i) the Door and Hardware Institute as an Architectural
- 25 Hardware Consultant; and
- 26 (ii) the International Door Association as a certified
- 27 Rolling Steel Fire Door Technician.
- 28 (B) The security firm has at least one (1) year of
- 29 commercial experience, in the preceding year, with the
- 30 following:
- 31 (i) Video surveillance system design and installation with
- 32 remote viewing capability from a secure facility.
- 33 (ii) Owning and operating a security monitoring station
- 34 with ownership control and use of a redundant offsite
- 35 backup security monitoring station.
- 36 (iii) Operating a facility that modifies commercial hollow
- 37 metal doors, frames, and borrowed lights with
- 38 authorization to apply the Underwriters Laboratories
- 39 label.
- 40 (4) The name, telephone number, and address of the
- 41 applicant.
- 42 (5) The name, telephone number, and address of the



1 manufacturing facility.

2 (6) The projected output in liters per year of e-liquid of the
3 manufacturing facility.

4 (7) The name, telephone number, title, and address of the
5 person responsible for the manufacturing facility.

6 (8) Verification that the facility will comply with proper
7 manufacturing processes.

8 (9) Written consent allowing the state police department to
9 conduct a state or national criminal history background check
10 on any person listed on the application.

11 (10) Written consent allowing the commission, if a permit is
12 issued to the applicant, to enter during normal business hours
13 the premises where the e-liquid is manufactured to conduct
14 physical inspections, sample the product to ensure the e-liquid
15 meets the requirements for e-liquid set forth in this article,
16 and perform an audit.

17 (11) A nonrefundable initial application fee of one thousand
18 dollars (\$1,000).

19 (12) Any other information required by the commission.

20 Sec. 2. (a) A manufacturing permit that is renewed by the
21 commission is valid for five (5) years.

22 (b) A renewal application for a manufacturing permit must
23 include the following:

24 (1) The name, telephone number, and address of the
25 applicant.

26 (2) The name, telephone number, and address of the
27 manufacturing facility.

28 (3) The output in liters per year of e-liquid of the
29 manufacturing facility.

30 (4) The name, telephone number, title, and address of the
31 person responsible for the manufacturing facility.

32 (5) Certification by the applicant that the applicant will
33 continue to use the security protocol approved by the
34 commission with the applicant's initial application. However,
35 if the applicant desires to change the previously approved
36 security protocol, the applicant shall submit the suggested
37 changes to the commission for approval.

38 (6) Certification by the security firm with which the
39 manufacturer has a security agreement that the manufacturer
40 meets all security requirements set forth in section 6(10)
41 through 6(15) of this chapter and that the security firm will
42 not withhold its certification because the security equipment



of the manufacturer is not sold by or proprietary to the security firm.

(7) Verification that the facility uses proper manufacturing processes.

(8) Written consent allowing the state police department to conduct a state or national criminal history background check on any person listed on the application.

(9) Written consent allowing the commission, if a permit is renewed to the applicant, to enter the premises where the e-liquid is manufactured to conduct physical inspections, sample the product to ensure the e-liquid meets the requirements of e-liquid set forth in this article, and perform an audit.

(10) A nonrefundable renewal application fee of five hundred dollars (\$500).

(11) Any other information required by the commission.

Sec. 3. The security protocol that is employed at the applicant's facility is confidential under IC 5-14-3-4.

Sec. 4. (a) A permit may not be transferred:

(1) from the permit holder to another person; or

(2) from the location where the permit was approved or renewed to another location;

unless approved by the commission.

(b) The commission shall allow a permit to be transferred under subsection (a) if the permit has not been suspended or revoked and the new permit holder or location meets the requirements under this article.

Sec. 5. If the information required for the initial or renewal permit changes, the permit holder shall notify the commission within ten (10) business days of the change. If any change in the information required for an application results in a violation of this article, the commission may impose a penalty as provided in this article.

Sec. 6. A manufacturing facility shall comply with the following requirements:

(1) An e-liquid container must use a child proof cap.

(2) An e-liquid container must be secured using either ring seals or plastic wrap.

(3) The label on an e-liquid container must identify the active ingredients.

(4) The label must include a separate designation if the product contains nicotine.



- 1 (5) The label must include a manufacturing date and batch
2 number.
3 (6) The label must include a scannable encryption code tied to
4 the batch number as prescribed by the commission.
5 (7) An e-liquid container must be distributed and sold within
6 two (2) years of the date of manufacture.
7 (8) The manufacturing facility must conduct all mixing,
8 bottling, and packaging activities in a clean room.
9 (9) The manufacturer must take reasonable steps to ensure
10 that an unauthorized ingredient is not included in any e-liquid
11 produced for sale in Indiana.
12 (10) The manufacturer must take reasonable steps to ensure
13 that all ingredients used in the production of e-liquid are
14 stored in a secure area accessible only by authorized
15 personnel.
16 (11) The manufacturer shall have a remotely monitored
17 security system at the facility in areas where e-liquid is mixed,
18 bottled, packaged, and stored.
19 (12) The manufacturer shall have an exclusive high security
20 key system that limits access to areas where e-liquid is mixed,
21 bottled, packaged, and stored to authorized personnel only.
22 (13) The manufacturer's facility must be subject to
23 twenty-four (24) hour video recording where e-liquid is
24 mixed, bottled, packaged, and stored. The video recordings
25 must be retained for at least thirty (30) days.
26 (14) The manufacturer must take reasonable steps to ensure
27 that only authorized personnel have access to secured areas of
28 the facility where e-liquid is mixed, bottled, and packaged.
29 (15) The manufacturer must store and maintain three (3) ten
30 (10) milliliter sample bottles from each production batch for
31 a period of not less than three (3) years in a secure limited
32 access area with recorded video surveillance.
33 (16) The manufacturer must submit to random audits of the
34 facility and the manufacturer's samples and records by the
35 commission.
36 (17) The manufacturer must submit to random site visits by
37 the commission.
38 (18) The manufacturer may:
39 (A) own and control both the e-liquid manufacturing
40 process and the bottling process; or
41 (B) subcontract with another manufacturer for the
42 performance of the e-liquid manufacturing service, the



1 bottling services, or both services.

2 However, both the manufacturer performing a service under
3 clause (B) and the manufacturer for which the service is
4 performed must meet the requirements of this chapter.

5 (19) The manufacturer or anyone having a financial interest
6 in a manufacturer may not have been convicted of a felony or
7 an offense involving a controlled substance.

8 Sec. 7. (a) On receipt of a completed permit application, the
9 commission shall forward a copy of the application to the state
10 police department. The state police department shall perform a
11 state or national criminal history background check of the
12 applicant and return the application to the commission along with
13 the state police department's findings from the state or national
14 background check.

15 (b) The commission shall review the permit application after it
16 is returned from the state police department under subsection (a).
17 The commission shall grant or deny a completed application for a
18 permit within sixty (60) days of receipt of the application. If the
19 commission determines that:

- 20 (1) all the requirements under this article have been met; and
21 (2) the applicant has not been convicted of a felony involving
22 a controlled substance;

23 the commission shall approve the application for issuance of the
24 permit.

25 (c) If the completed application for a permit is denied, the
26 commission must state the reasons for the denial. If a completed
27 application is denied under this section, the applicant may reapply
28 within thirty (30) days after the date of the denial. There is no
29 application fee for a reapplication under this subsection.

30 Chapter 5. Manufacturing and Safety Requirements

31 Sec. 1. (a) E-liquid distributed and sold within Indiana may be
32 comprised of any of the following ingredients:

- 33 (1) Vegetable glycerol or vegetable glycerin.
34 (2) Propylene glycol.
35 (3) Nicotine.
36 (4) Flavorings.
37 (5) Water.
38 (6) Other ingredients approved by the department under
39 section 2 of this chapter or any ingredient specifically
40 approved for inclusion in e-liquid by the federal Food and
41 Drug Administration.

42 (b) A person may not purchase, sell, use, or possess any



1 substance intended to be vaporized and inhaled in a vapor pen that
 2 contains any ingredient other than an ingredient allowed under
 3 subsection (a).

4 (c) All e-liquid retailers, distributors, and manufacturers who
 5 mix, bottle, or sell e-liquid in Indiana before July 1, 2015, shall,
 6 before July 1, 2016:

7 (1) sell or remove from retail all inventory of e-liquid
 8 manufactured before July 1, 2015; or

9 (2) acquire:

10 (A) a valid tobacco sales certificate issued by the
 11 commission in accordance with IC 7.1-3-18.5-1;

12 (B) an e-liquid manufacturing permit issued under
 13 IC 7.1-7-4; or

14 (C) a distributor's license issued under IC 6-7-2-8.

15 Sec. 2. (a) A manufacturer of e-liquid may file a request with the
 16 department for approval of an ingredient to be allowed in the
 17 composition of e-liquid.

18 (b) The department may approve the request filed under
 19 subsection (a) if the department determines that the ingredient will
 20 not pose an unreasonable threat to public health and safety.

21 Chapter 6. Violations and Penalties

22 Sec. 1. (a) If a manufacturer violates this article, the
 23 manufacturer may be reprimanded, assessed a civil penalty, or
 24 have the manufacturer's permit suspended, or in the case of gross
 25 or willful misconduct, the permit holder may have the
 26 manufacturer's permit revoked for a period of up to one (1) year.
 27 At the end of the revocation period, the manufacturer may apply
 28 to the commission for reinstatement of the permit.

29 (b) The commission may assess a civil penalty against a
 30 manufacturer for a violation of this article in an amount that does
 31 not exceed ten thousand dollars (\$10,000). A civil penalty may be
 32 assessed in addition to other penalties allowed under this article.

33 Sec. 2. (a) If a retailer knowingly sells e-liquid:

34 (1) to a minor;

35 (2) purchased from a manufacturer that does not have a
 36 permit; or

37 (3) that has been altered or tampered with;

38 the retailer commits a Class C infraction. For a sale to take place
 39 under this section, the buyer must pay the retail establishment for
 40 the e-liquid.

41 (b) Notwithstanding IC 34-28-5-4(c), a civil judgment for an
 42 infraction committed under this section must be imposed as



1 follows:

2 (1) If the retail establishment at that specific business location
3 has not been issued a citation or summons for a violation of
4 this section in the previous one hundred eighty (180) days, a
5 civil penalty of up to two hundred dollars (\$200).

6 (2) If the retail establishment at that specific business location
7 has had one (1) citation or summons issued for a violation of
8 this section in the previous one hundred eighty (180) days, a
9 civil penalty of up to four hundred dollars (\$400).

10 (3) If the retail establishment at that specific business location
11 has had two (2) citations or summonses issued for a violation
12 of this section in the previous one hundred eighty (180) days,
13 a civil penalty of up to seven hundred dollars (\$700).

14 (4) If the retail establishment at that specific business location
15 has had three (3) or more citations or summonses issued for
16 a violation of this section in the previous one hundred eighty
17 (180) days, a civil penalty of up to one thousand dollars
18 (\$1,000).

19 A retail establishment may not be issued a citation or summons for
20 a violation of this section more than once every twenty-four (24)
21 hours for each specific business location.

22 (c) It is not a defense that the person to whom e-liquid was sold
23 or distributed did not inhale or otherwise consume e-liquid.

24 (d) The following defenses are available to a retail establishment
25 accused of selling or distributing e-liquid to a person who is less
26 than eighteen (18) years of age:

27 (1) The buyer or recipient produced a driver's license bearing
28 the purchaser's or recipient's photograph showing that the
29 purchaser or recipient was of legal age to make the purchase.

30 (2) The buyer or recipient produced a photographic
31 identification card issued under IC 9-24-16-1 or a similar card
32 issued under the laws of another state or the federal
33 government showing that the purchaser or recipient was of
34 legal age to make the purchase.

35 (3) The appearance of the purchaser or recipient was such
36 that an ordinary prudent person would believe that the
37 purchaser or recipient was not less than the age that complies
38 with regulations promulgated by the federal Food and Drug
39 Administration.

40 (e) It is a defense that the accused retail establishment sold or
41 delivered e-liquid to a person who acted in the ordinary course of
42 employment or a business concerning e-liquid:



- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(f) As used in this section, "distribute" means to give e-liquid to another person as a means of promoting, advertising, or marketing e-liquid to the general public.

(g) Unless a person buys or receives e-liquid under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes e-liquid is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the e-liquid is issued a citation or summons in violation of this article.

(h) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(i) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal sale of e-liquid, a Class B infraction.

Sec. 3. (a) Except as otherwise permitted by this article, a person may not purchase, receive, manufacture, import, or transport, or cause to be imported or transported from another state, territory, or country into Indiana, or transport, ship, barter, give away, exchange, furnish, or otherwise handle or dispose of e-liquid, or to possess e-liquid for purpose of sale.

(b) A person may not knowingly receive or acquire e-liquid from a person or authorized distributor who does not hold a valid permit under this article to sell, deliver, furnish, or give the e-liquid.

(c) A person who violates this section commits a Class A infraction.

Sec. 4. (a) A permittee may bring a civil action against any:

- (1) producer of e-liquid; or
- (2) other person or entity;

that distributes an e-liquid not approved for sale in Indiana to a retailer for the purposes of resale.

(b) A permittee may bring the civil action described in subsection (a) in a court with jurisdiction in Indiana:

- (1) based on a violation of this article or the rules adopted by the commission to enjoin the violation; and
- (2) to recover for actual monetary loss from the violation.



- 1 **The court shall award attorney's fees to the prevailing party.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 539, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 12, delete "IC 7.1-7-2-7." and insert "**IC 7.1-7-2-8.**".

Page 2, line 18, delete "IC 7.1-7-2-15." and insert "**IC 7.1-7-2-16.**".

Page 2, line 26, delete "IC 7.1-7-2-16." and insert "**IC 7.1-7-2-17.**".

Page 2, line 35, delete "IC 7.1-7-2-17." and insert "**IC 7.1-7-2-18.**".

Page 3, line 1, delete "IC 7.1-7-2-8);" and insert "**IC 7.1-7-2-9);**".

Page 3, line 26, delete "taking" and insert "**auditing of**".

Page 3, line 33, delete "and".

Page 3, line 34, delete "cleaning and sanitizing of".

Page 3, line 34, delete "is conducted in a" and insert "**used in the manufacturing process is easily cleanable, as defined in 410 IAC 7-24-27(a), in such a way that it**".

Page 3, line 35, delete "manner that reasonably".

Page 3, line 36, delete "materials." and insert "**materials; and**".

(3) The cleaning and sanitizing of equipment is consistent with the Indiana standards for public health and cleanliness that apply to food processing facilities in the state where food is processed and packaged for human consumption."

Page 3, line 37, delete "refillable and unsealed receptacles" and insert "**any receptacle that contains e-liquid.**".

Page 3, delete lines 38 through 41.

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 7. "Distributor" means a person who is licensed under IC 6-7-2-2 that:

(1) distributes, sells, barters, or exchanges e-liquid in Indiana to retail dealers for the purpose of resale; or

(2) purchases e-liquid directly from a manufacturer for the purpose of resale."

Page 4, line 2, delete "7." and insert "**8.**".

Page 4, line 8, delete "8." and insert "**9.**".

Page 4, line 8, delete "that is:" and insert "**that:**".

Page 4, line 9, after "(1)" insert "**is**".

Page 4, delete lines 11 through 12, begin a new line block indented and insert:

"(2) specifically excludes substances contained in non-refillable sealed cartridges of two (2) milliliters or less



used in e-cigarettes."

Page 4, line 13, delete "9." and insert **"10."**

Page 4, line 20, delete "10." and insert **"11."**

Page 4, line 22, delete "11." and insert **"12."**

Page 4, line 26, delete "12." and insert **"13."**

Page 4, line 27, delete "individual" and insert **"employee"**.

Page 4, line 28, after "been" insert **"collectively"**.

Page 4, line 28, delete "a:" and insert **"both:"**.

Page 4, line 29, after "(1)" insert **"a"**.

Page 4, line 30, after "(2)" insert **"a"**.

Page 4, line 32, delete "13." and insert **"14."**

Page 4, line 34, delete "14." and insert **"15."**

Page 4, line 36, delete "15." and insert **"16."**

Page 4, line 38, delete "16." and insert **"17."**

Page 4, line 41, delete "17." and insert **"18."**

Page 5, line 2, delete "18." and insert **"19."**

Page 5, line 9, delete "19." and insert **"20."**

Page 5, line 11, delete "and that:" and insert **"who as of July 1, 2015:"**.

Page 5, line 16, delete "20." and insert **"21."**

Page 5, line 29, delete "take" and insert **"audit"**.

Page 5, line 29, after "samples" insert **"maintained by the manufacturer"**.

Page 5, between lines 35 and 36, begin a new line block indented and insert:

"(6) To approve not less than three (3) different independent testing laboratories from which a manufacturer may choose to send any e-liquid sample for testing, at the manufacturer's expense, as part of any audit, as directed by the commission."

Page 5, line 41, after "e-liquid" insert **"to retailers or distributors"**.

Page 6, delete lines 9 through 10, begin a new line double block indented and insert:

"(A) designed to include a clean room space where all mixing, bottling, and packaging activities will occur; and".

Page 6, line 19, delete "Documentation" and insert **"Verified documents, satisfactory to the commission,"**.

Page 6, line 21, delete "not less".

Page 6, line 22, delete "than one (1) employee" and insert **"one (1) or more employees"**.

Page 6, line 23, delete "is" and insert **"are collectively"**.

Page 7, line 2, delete "gallons" and insert **"liters"**.

Page 7, line 12, after "enter" insert **"during normal business"**



hours".

Page 7, line 28, delete "gallons" and insert **"liters"**.

Page 8, line 42, delete "comply with reasonable" and insert **"conduct all mixing, bottling, and packaging activities in a"**.

Page 9, line 1, delete "guidelines regarding".

Page 9, line 1, delete "room" and insert **"room."**.

Page 9, line 1, delete "facilities and sterilization".

Page 9, delete line 2.

Page 9, line 25, after "must" insert **"store and maintain three (3) ten (10) milliliter sample bottles from each production batch for a period of not less than three (3) years in a secure limited access area with recorded video surveillance and"**.

Page 9, line 26, after "manufacturer's" insert **"samples and"**.

Page 10, line 23, delete "chapter." and insert **"chapter or any ingredient specifically approved for inclusion in e-liquid by the Food and Drug Administration of the United States of America."**.

Page 10, between lines 27 and 28, begin a new paragraph and insert:

"(c) All e-liquid retailers, distributors, and manufacturers who mix, bottle, or sell e-liquid in Indiana before July 1, 2015, shall, before July 1, 2016:

(1) sell or remove from retail all inventory of e-liquid manufactured before July 1, 2015; or

(2) acquire:

(A) a valid tobacco sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1;

(B) an e-liquid manufacturing permit issued under IC 7.1-7.5-1; or

(C) a distributor's license issued under IC 6-7-2-8."

Page 12, line 41, after "person" insert **"or authorized distributor"**.

and when so amended that said bill do pass.

(Reference is to SB 539 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 4.



Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that SB 539 which is eligible for second reading, has been reassigned to the Committee on Tax & Fiscal Policy.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 539, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, delete "7.1-7-2-6." and insert "**7.1-7-2-7.**".

Page 2, line 12, delete "7.1-7-2-8." and insert "**7.1-7-2-9.**".

Page 2, line 18, delete "7.1-7-2-16." and insert "**7.1-7-2-17.**".

Page 2, line 26, delete "7.1-7-2-17." and insert "**7.1-7-2-18.**".

Page 2, line 35, delete "7.1-7-2-18." and insert "**7.1-7-2-19.**".

Page 3, line 1, delete "7.1-7-2-9);" and insert "**7.1-7-2-10) that contains tobacco;**".

Page 3, line 7, after "Applicability" insert "**and Purpose**".

Page 3, between lines 12 and 13, begin a new paragraph and insert:

"Sec. 2. The purpose of this article is, in the absence of federal regulations, to protect public health and safety by:

(1) ensuring the safety and security of e-liquid manufactured for sale in Indiana;

(2) ensuring that e-liquid manufactured or sold in Indiana conforms to appropriate standards of identity, strength, quality, and purity; and

(3) ensuring that e-liquid is not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety."

Page 3, line 13, delete "Sec. 2." and insert "**Sec. 3.**".

Page 3, line 15, delete "Sec. 3." and insert "**Sec. 4.**".

Page 3, line 40, delete "food processing facilities in the state where food is" and insert "**commercial kitchens in the state.**".

Page 3, delete line 41.

Page 3, after line 42, begin a new paragraph and insert:

"Sec. 6. "Cooperative" means any group of people who join



together to satisfy the requirements set forth in IC 7.1-7-4-6."

Page 4, line 1, delete "Sec. 6." and insert **"Sec. 7."**

Page 4, line 3, delete "Sec. 7." and insert **"Sec. 8."**

Page 4, line 9, delete "Sec. 8." and insert **"Sec. 9."**

Page 4, line 12, delete "two (2)" and insert **"four (4)"**.

Page 4, line 15, delete "Sec. 9." and insert **"Sec. 10."**

Page 4, line 19, delete "two (2)" and insert **"four (4)"**.

Page 4, line 21, delete "Sec. 10." and insert **"Sec. 11."**

Page 4, line 28, delete "Sec. 11." and insert **"Sec. 12."**

Page 4, line 30, delete "Sec. 12." and insert **"Sec. 13."**

Page 4, line 34, delete "Sec. 13." and insert **"Sec. 14."**

Page 4, delete lines 40 through 41, begin a new paragraph and insert:

"Sec. 15. "Manufacturer" means a person or cooperative, located inside or outside Indiana, that is engaged in manufacturing e-liquid."

Page 4, line 42, delete "Sec. 15." and insert **"Sec. 16."**

Page 5, line 2, delete "Sec. 16." and insert **"Sec. 17."**

Page 5, line 4, delete "Sec. 17." and insert **"Sec. 18."**

Page 5, line 7, delete "Sec. 18." and insert **"Sec. 19."**

Page 5, line 10, delete "Sec. 19." and insert **"Sec. 20."**

Page 5, delete lines 17 through 23, begin a new paragraph and insert:

"Sec. 21. "Security firm" means an entity that:

(1) is independent from an applicant and manufacturer;

(2) has experience in the security business; and

(3) as of July 1, 2015:

(A) meets the qualifications under IC 7.1-7-4-1(d)(3);

(B) is a locksmith; and

(C) provides services necessary to ensure the safety and security of e-liquid manufactured for sale in Indiana."

Page 5, line 24, delete "Sec. 21." and insert **"Sec. 22."**

Page 5, line 35, delete "permits and charge fees." and insert **"permits."**

Page 5, between lines 35 and 36, begin a new line block indented and insert:

"(3) To charge fees to cover the costs of administering this article. The fees charged under this subdivision may not exceed the actual costs incurred by the commission."

Page 5, line 36, delete "(3)" and insert **"(4)"**.

Page 5, line 37, delete "(4)" and insert **"(5)"**.

Page 5, line 40, delete "(5)" and insert **"(6)"**.



Page 6, line 2, delete "(6)" and insert "(7)".

Page 6, delete lines 25 through 30, begin a new line block indented and insert:

"(2) A service agreement that:

- (A) the applicant has entered into with a security firm;**
- (B) is valid for a period of five (5) years after the date of the permit application;**
- (C) provides for the security firm to provide service and support to meet the security requirements established by this article;**
- (D) requires the security firm to certify that the manufacturer meets all requirements set forth in IC 7.1-7-4-6(10) through IC 7.1-7-4-6(15); and**
- (E) is renewable for the entire length of time that the applicant holds a permit issued by the commission."**

Page 7, line 30, delete "five" and insert "one".

Page 7, line 31, delete "(\$5,000)." and insert "(\$1,000).".

Page 8, between lines 10 and 11, begin a new line block indented and insert:

"(7) Certification by the security firm with which the manufacturer has a security agreement that the manufacturer meets all requirements set forth in IC 7.1-7-4-6(10) through IC 7.1-7-4-6(15)."

Page 8, line 11, delete "(7)" and insert "(8)".

Page 8, line 14, delete "(8)" and insert "(9)".

Page 8, delete lines 20 through 21, begin a new line block indented and insert:

"(10) A nonrefundable renewal application fee of five hundred dollars (\$500)."

Page 8, line 22, delete "(10)" and insert "(11)".

Page 9, line 10, delete "proscribed" and insert "prescribed".

Page 9, line 22, delete "manufacturer's security firm shall install" and insert "**manufacturer shall have**".

Page 9, line 30, delete "with remote viewing".

Page 9, line 31, delete "capability in areas".

Page 10, delete lines 3 through 4, begin a new line block indented and insert:

"(17) The manufacturer may:

- (A) own and control both the e-liquid manufacturing process and the bottling process; or**
- (B) subcontract with another manufacturer for the performance of the e-liquid manufacturing service, the**



bottling services, or both services.

However, both the manufacturer performing a service under clause (B) and the manufacturer for which the service is performed must meet the requirements of this chapter."

Page 10, line 7, delete "moral turpitude or".

Page 11, line 13, delete "IC 7.1-7.5-1;" and insert "**IC 7.1-7-4;**".

and when so amended that said bill do pass.

(Reference is to SB 539 as printed February 3, 2015.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 539 be amended to read as follows:

Page 3, line 36, delete "review of personnel working knowledge and training,".

Page 4, line 2, after "(2)" delete "the".

Page 4, line 6, delete "The" and insert "**the**".

Page 4, line 15, delete "6-7-2-2" and insert "**6-7-2-8**".

Page 4, line 39, delete "certified".

Page 4, line 39, after "grade additive" insert "**or synthetic flavoring substance that is**".

Page 4, line 40, delete "flavor" and insert "**flavor, that is approved by the federal Food and Drug Administration as a permissible flavoring,**".

Page 5, delete lines 3 through 8, begin a new paragraph and insert:

"Sec. 14. "Locksmith" means a person who, or a firm that employs at least one (1) employee who, for the previous one (1) year period has been certified as a certified professional locksmith by the Associated Locksmiths of America."

Page 6, line 2, after "Sec. 2." insert "**(a)**".

Page 6, line 19, delete "from" and insert "**to**".

Page 6, between lines 21 and 22, begin a new paragraph and insert:

"(b) All records subject to audit by the commission under subsection (a) are declared confidential for the purposes of IC 5-14-3-4(a)(1) and are not subject to inspection or copying by the public."

SB 539—LS 7388/DI 77



Page 7, line 8, delete "and".

Page 7, between lines 8 and 9, begin a new line double block indented and insert:

"(E) prohibits the security firm from withholding its certification as described in clause (D) because the security equipment of the applicant is not sold by or proprietary to the security firm; and".

Page 7, line 9, delete "(E)" and insert "(F)".

Page 7, line 11, after "documents" delete ",".

Page 7, line 11, after "commission" delete ",".

Page 7, line 14, after "employed" insert **"at least"**.

Page 7, line 14, delete "or".

Page 7, line 15, delete "more employees" and insert **"employee"**.

Page 7, line 16, delete "are collectively" and insert **"is"**.

Page 7, line 16, delete "by:" and insert **"by both:"**.

Page 8, between lines 30 and 31, begin a new line block indented and insert:

"(6) Certification by the security firm with which the manufacturer has a security agreement that the manufacturer meets all security requirements set forth in section 6(10) through 6(15) of this chapter and that the security firm will not withhold its certification because the security equipment of the manufacturer is not sold by or proprietary to the security firm."

Page 8, line 31, delete "(6)" and insert "(7)".

Page 8, delete lines 33 through 36.

Page 9, line 8, delete "and not a public record".

Page 9, line 20, delete "three (3)" and insert **"ten (10)"**.

Page 10, delete lines 9 through 12, begin a new line block indented and insert:

"(12) The manufacturer shall have an exclusive high security key system that limits access to areas where e-liquid is mixed, bottled, packaged, and stored to authorized personnel only."

Page 10, line 23, delete "surveillance and" and insert **"surveillance."**

(16) The manufacturer must"

Page 10, line 26, delete "(16)" and insert **"(17)"**.

Page 10, line 28, delete "(17)" and insert **"(18)"**.

Page 10, line 37, delete "(18)" and insert **"(19)"**.

Page 11, line 10, after "met;" insert **"and"**.

Page 11, delete line 11.

Page 11, line 12, delete "(3)" and insert **"(2)"**.

Page 11, line 12, delete "felony;" and insert **"felony involving a"**



controlled substance;".

Page 11, line 17, after "reapply" insert "**within thirty (30) days after the date of the denial. There is no application fee for a reapplication under this subsection."**

Page 11, delete line 18.

Page 11, line 29, after "the" insert "**federal**".

Page 11, line 30, delete "Administration of the United States of America." and insert "**Administration.**".

Page 14, line 22, after "Sec. 4." insert "**(a)**".

Page 14, line 22, delete "any person" and insert "**any:**

(1) producer of e-liquid; or

(2) other person or entity;

that distributes an e-liquid not approved for sale in Indiana to a retailer for the purposes of resale."

Page 14, line 23, delete "or entity who violates this article.", begin a new paragraph and insert:

"(b)".

Page 14, line 24, after "action" insert "**described in subsection (a)**".

(Reference is to SB 539 as printed February 20, 2015.)

YODER

